

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	
W.R. Grace & Co., <i>et al.</i>	:	Case No. 01-01139 JKF
	:	
Debtors.	:	

**REQUEST OF ONEBEACON AMERICA INSURANCE COMPANY
AND SEATON INSURANCE COMPANY FOR THE COURT TO
TAKE JUDICIAL NOTICE OF CERTAIN DOCUMENTS AND FACTS**

Pursuant to Rule 201 of the Federal Rules of Evidence and Rule 9017 of the Federal Rules of Bankruptcy Procedure, OneBeacon America Insurance Company (“OneBeacon”) and Seaton Insurance Company (“Seaton”) hereby respectfully request that this Court take judicial notice of the existence and contents of certain documents described below, so that they may be considered part of the record at Phase II of the Confirmation Hearing in this matter.

Under Rule 201 of the Federal Rules of Evidence, a court may take “judicial notice of adjudicative facts” that are “not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(a) & (b). Under Rule 201, “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d).

It is appropriate for this Court to take judicial notice of its own files, including pleadings and other papers of record in this bankruptcy case and in related adversary proceedings. *See Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 892 (D. Del.

1991). It is also appropriate for this Court to take judicial notice of facts contained in public or quasi-public records. *See Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F. Supp. 2d 1224, 1232-33 (E.D. Cal. 2003); *Southmark Prime Plus, L.P. v. Falzone*, 776 F. Supp. 888, 892-93 (D. Del. 1991) (citing *Massachusetts v. Westcott*, 431 U.S. 322, 323 n.2 (1977)); *see also Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (SEC filings and facts contained therein); *Grassmuck v. Barnett*, 281 F. Supp. 2d 1227, 1232 (W.D. Wash. 2003) (facts contained in public corporate records kept by state officials); *Boone v. Meniffee*, 387 F. Supp. 2d 338, 343 n.4 (S.D.N.Y. 2005) (facts available via official government web sites); *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003) (same); *In re Holstein*, 299 B.R. 211, 233 n.26 (Bankr. N.D. Ill. 2003) (same).

Court Records

OneBeacon and Seaton request that the Court take judicial notice of the existence and contents of the following pleadings and other papers filed of record in this bankruptcy case and in related adversary proceedings:¹

1. Original Complaint filed on or about March 18, 2002, in an adversary proceeding before this Court entitled *Official Committee of Asbestos Personal Injury Claimants and Official Committee of Asbestos Property Damage Claimants of W.R. Grace & Co. v. Fresenius Medical Care Holdings, Inc. and National Medical Care, Inc.*, Adv. No. 02-2011 (the “Fresenius Adversary Proceeding”), attached hereto as Exhibit 1, and pre-marked as trial exhibit OS-8.

¹ Although it is not entirely clear that it is necessary to request judicial notice of papers filed on the docket of the very same bankruptcy case, out of an abundance of caution, this request seeks judicial notice of papers filed in this bankruptcy case as well as those filed in related adversary proceedings.

2. Answer to Original Complaint filed by Fresenius Medical Care Holdings, Inc. and National Medical Care, Inc. on April 1, 2002 in the Fresenius Adversary Proceeding, attached hereto as Exhibit 2, and pre-marked as trial exhibit OS-9.

3. Original Complaint filed on or about March 18, 2002, in an adversary proceeding before this Court entitled *Official Committee of Asbestos Personal Injury Claimants and Official Committee of Asbestos Property Damage Claimants of W.R. Grace & Co. v. Sealed Air Corporation and Cryovac, Inc.*, Adv. No. 02-2010 (the “Sealed Air Adversary Proceeding”), attached hereto as Exhibit 3, and pre-marked as trial exhibit OS-11.

4. Answer and Affirmative Defenses of Defendants Sealed Air Corporation and Cryovac, Inc. to Plaintiff’s Original Complaint, filed on or about April 1, 2002 in the Sealed Air Adversary Proceeding, attached hereto as Exhibit 4, and pre-marked as trial exhibit OS-12.

5. Order Disallowing and Expunging Certain of the Claims of Seaton Insurance Company and OneBeacon America Insurance Company (D.I. 15503), entered on or about May 3, 2007 in this bankruptcy case, including all exhibits thereto, attached hereto as Exhibit 5, and pre-marked as trial exhibit OS-14.

6. Complaint for Declaratory and Other Relief, including all exhibits thereto, filed on or about September 2, 2004 in an adversary proceeding before this Court entitled *The Scotts Company v. American Employers’ Insurance Company, et al.*, Adv. No. 04-55083-JKF, attached hereto as Exhibit 6, and pre-marked as trial exhibit OS-15.

7. Objection of The Scotts Company LLC to Confirmation of First Amended Joint Plan of Reorganization (D.I. 21775), filed on or about May 20, 2009 in this

bankruptcy case, and exhibits thereto, attached hereto as Exhibit 7, and pre-marked as trial exhibit OS-29.

8. Objections of BNSF Railway Company to Confirmation of the First Amended Chapter 11 Plan of W.R. Grace & Co., et al., the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants' Representative, and the Official Committee of Equity Security Holders Dated February 3, 2009 (D.I. 21769), filed on or about May 20, 2009 in this bankruptcy case, and exhibits thereto, attached hereto as Exhibit 8, and pre-marked as trial exhibit OS-28.

9. Motion of Kaneb Pipe Line Operating Partnership, L.P. and Support Terminal Services, Inc. for an Order Modifying the Automatic Stay (D.I. 20538), filed on or about January 16, 2009 in this bankruptcy case, attached hereto as Exhibit 9, and pre-marked as trial exhibit OS-40.

10. Motion of Kaneb Pipe Line Operating Partnership, L.P. and Support Terminal Services, Inc. for an Order Modifying the Automatic Stay: Macon, Georgia Site (D.I. 20846), filed on or about February 25, 2009 in this bankruptcy case, attached hereto as Exhibit 10, and pre-marked as trial exhibit OS-41.

11. Reply to Debtors' Objection to the Motion of Kaneb Pipe Line Operating Partnership, L.P. and Support Terminal Services, Inc. for an Order Modifying the Automatic Stay (D.I. 21067), filed on or about March 23, 2009 in this bankruptcy case, attached hereto as Exhibit 11, and pre-marked as trial exhibit OS-42.

12. Kaneb's Reply to: (1) Debtor's Response, (2) OneBeacon America Insurance Company's Response, and (3) Continental Casualty Company's Response to: The Motion of Kaneb Pipe Line Operating Partnership, L.P. and Support Terminal

Services, Inc. for an Order Modifying the Automatic Stay (D.I. 21068), filed on or about March 23, 2009 in this bankruptcy case, attached hereto as Exhibit 12, and pre-marked as trial exhibit OS-43.

13. Supplemental Memorandum of Kaneb Pipe Line Operating Partnership, L.P. and Support Terminal Services, Inc. in Support of Motion for Order Modifying the Automatic Stay (D.I. 21262), filed under seal on or about April 13, 2009 in this bankruptcy case, attached hereto as Exhibit 13, and pre-marked as trial exhibit OS-44.

14. Supplemental Verified Statement in Connection with the Representation of Creditors as Required by Fed. R. Bankr. P. Rule 2019 by Cooney and Conway (D.I. 20895), filed on or about March 2, 2009 in this bankruptcy case, attached hereto as Exhibit 14, and pre-marked as trial exhibit OS-23. OneBeacon and Seaton further request that the Court take notice of the related confidential list of clients disclosed to the Court *in camera* but not available to OneBeacon and Seaton.

15. Notice of Filing Amended Statement Under Bankruptcy Rule 2019 by Baron & Budd, P.C. (D.I. 20840), filed on or about February 25, 2009 in this bankruptcy case, attached hereto as Exhibit 15, and pre-marked as trial exhibit OS-24. OneBeacon and Seaton further request that the Court take notice of the related confidential list of clients disclosed to the Court *in camera* but not available to OneBeacon and Seaton.

16. Third Amended Verified Statement in Connection with the Representation of Creditors as Required by F.R.B.P. Rule 2019 by Weitz & Luxenberg (D.I. 12979), filed on or about August 7, 2006 in this bankruptcy case, attached hereto as Exhibit 16, and pre-marked as trial exhibit OS-25. OneBeacon and Seaton further request that the Court take notice of the related confidential list of clients disclosed to the Court *in*

camera but not available to OneBeacon and Seaton.

17. Eleventh Amended Verified Statement Pursuant to Fed. R. Bankr. P. 2019 Filed by Motley Rice LLC (D.I. 20777), filed on or about February 20, 2009 in this bankruptcy case, attached hereto as Exhibit 17, and pre-marked as trial exhibit OS-26. OneBeacon and Seaton further request that the Court take notice of the related confidential list of clients disclosed to the Court *in camera* but not available to OneBeacon and Seaton.

Records of Court-Appointed Claims Processing Agent and Claims Consultant

OneBeacon and Seaton request that the Court take judicial notice of the existence and contents of the following proofs of claim and ballots, each obtained from either the court-appointed Claims Processing Agent or the court-appointed Claims Consultant:

1. Proof of Claim No. 15531, filed by Seaton Insurance Company with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., and acknowledged previously by the Debtors and by the Court in D.I. 9482 and D.I. 9519, attached as Exhibit A to Exhibit 5 hereto, which is pre-marked as trial exhibit OS-14.

2. Amended Proof of Claim No. 15531, filed by Seaton Insurance Company with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., attached hereto as Exhibit 18, and pre-marked as trial exhibit OS-48.

3. Proof of Claim No. 15593, filed by OneBeacon America Insurance Company with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., and acknowledged previously by the Debtors and by the Court in D.I. 9482 and D.I. 9519, attached as Exhibit B to Exhibit 5 hereto, which is pre-marked

as trial exhibit OS-14.

4. Amended Proof of Claim No. 15593, filed by OneBeacon America Insurance Company with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., attached hereto as Exhibit 19, and pre-marked as trial exhibit OS-49.

5. Class 6 Asbestos PI Claims (Indirect PI Trust Claims) Ballot provided to OneBeacon in connection with the solicitation and tabulation of votes to accept or reject the Plan by the court-appointed Claims Consultant for this bankruptcy case, BMC Group, Inc., attached hereto as Exhibit 20, and pre-marked as trial exhibit OS-16.

6. Class 6 Asbestos PI Claims (Indirect PI Trust Claims) Ballot provided to Seaton in connection with the solicitation and tabulation of votes to accept or reject the Plan by the court-appointed Claims Consultant for this bankruptcy case, BMC Group, Inc., attached hereto as Exhibit 21, and pre-marked as trial exhibit OS-17.

7. Class 9 General Unsecured Claims Ballot provided to OneBeacon in connection with the solicitation and tabulation of votes to accept or reject the Plan by the court-appointed Claims Consultant for this bankruptcy case, BMC Group, Inc., attached hereto as Exhibit 22, and pre-marked as trial exhibit OS-18.

8. Proof of Claim No. 8112, filed by Fresenius Medical Care Holdings, Inc. with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., attached hereto as Exhibit 23, and pre-marked as trial exhibit OS-19.

9. Proof of Claim No. 14339, filed by Sealed Air Corporation with the court-appointed Claims Processing Agent for this bankruptcy case, Rust Consulting, Inc., attached hereto as Exhibit 24, and pre-marked as trial exhibit OS-20.

Public Records Available from Official Government Web Sites

OneBeacon and Seaton request that the Court take judicial notice of the existence and contents of the following public records, which may be obtained from the official government web sites of the Securities and Exchange Commission (edgar.sec.gov) or New York Department of State Division of Corporations (www.dos.state.ny.us):

1. SEC Form 8-K – W.R. Grace & Co., filed April 6, 2008, attached hereto as Exhibit 25, and pre-marked as trial exhibit OS-21.
2. Form S-4 Registration Statement filed with the United States Securities and Exchange Commission by W.R. Grace & Co. (to be renamed Fresenius National Medical Care, Inc.) (EIN 13-3461988) on August 2, 1996, SEC File No. 333-46281, and referenced in Plan Definition No. 124 (defining “Fresenius Transaction”), attached hereto as Exhibit 26, and pre-marked as trial exhibit OS-50.
3. Form S-4 Registration Statement filed with the United States Securities and Exchange Commission by W.R. Grace & Co. (to be renamed Sealed Air Corporation) (EIN 65-0654331) on February 13, 1998, SEC File No. 333-46281, and referenced in Plan Definition No. 92 (defining “Cryovac Transaction”), attached hereto as Exhibit 27, and pre-marked as trial exhibit OS-51.
4. NYS Department of State, Division of Corporations, Entity Information for Fresenius Medical Care Holdings, Inc., dated August 17, 2009, attached hereto as Exhibit 28, and pre-marked as trial exhibit OS-46.

Accordingly, OneBeacon and Seaton respectfully request that this Court take judicial notice of the existence and contents of the foregoing documents.

Respectfully submitted,

Dated: August 28, 2009

/s/ David P. Primack

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